

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MAY 9, 2006 THOMAS K. KAHN CLERK
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No. 05-17159  
Non-Argument Calendar

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D. C. Docket No. 04-00767-CV-CO-S

KIMERLING TRUCK PARTS, INC.,

Plaintiff-Counter-  
Defendant-Appellant,

STEVEN FEIGELSON,  
VICTOR FEIGELSON,

Plaintiffs-Appellants,

versus

BIRMINGHAM, CITY OF,

Defendant-Counter-  
Claimant-Appellee,

SCOTT MORRO,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Alabama

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**(May 9, 2006)**

Before DUBINA, CARNES and PRYOR, Circuit Judges.

PER CURIAM:

Plaintiffs-Appellants brought this action pursuant to 42 U.S.C. § 1983 and the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States alleging that the City of Birmingham, through respondeat superior (or in a conspiracy with Officer Morro and other unnamed city officials), is responsible for Officer Morro's actions and conduct in enforcing the City's Junk Yard Ordinance. Appellants primarily allege harassment, conspiracy and malicious prosecution based on their assumption that since "they are licensed by the State of Alabama as an automotive dismantler," they can operate a junk yard without the City's junk yard license. The district court granted summary judgment in favor of the Appellees on the federal claims and remanded the state law claims to the Circuit Court of Jefferson County, the court from which this case was initially removed.

This court reviews a district court's grant of summary judgment *de novo*, applying the same standard as the district court. *Hairston v. Gainsville Sun Pub. Co.*, 9 F.3d 913, 918 (11th Cir. 1993). A genuine issue of material fact does not exist unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict in its favor. *Chapman v. AI Transport*, 229 F.3d

1012, 1023 (11th Cir. 2000) (en banc) (quoting *Haves v. City of Miami*), 52 F.3d 918, 921 (11th Cir. 1995)).

After reviewing the record and reading the parties' briefs, we affirm the district court's grant of summary judgment in favor of the Appellees based on its well-reasoned memorandum opinion filed on November 18, 2005.

**AFFIRMED.**